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DEPARTMENT OF COMMERCE

International Trade Administration

[A-423-808, A-791-805, C-791-806, A-583-830]

Stainless Steel Plate in Coils from Belgium, South Africa, and Taiwan: Notice of Court Decision Not in Harmony with Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On September 7, 2012, the United States Court of Appeals for the Federal Circuit (CAFC) issued a decision not in harmony with the final determination of the Department of Commerce (the Department) that stainless steel plate in coils (SSPC) from Belgium, South Africa, and Taiwan with a nominal thickness of 4.75 millimeters (mm), but an actual thickness of less than 4.75 mm, is subject to the *AD and CVD Orders* on SSPC.<sup>1</sup> On March 26, 2013, the United States Court of International Trade (CIT) sustained the Department's results of

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<sup>1</sup> See *ArcelorMittal Stainless Belgium N.V. v. United States*, 694 F.3d 82 (Fed. Cir. 2012) (*ArcelorMittal*). Because the description of the scopes in the multiple SSPC orders is identical and given the nature of the inquiry, the Department has considered it appropriate pursuant to 19 CFR 351.225(m) to conduct a single inquiry and issue a single scope ruling that applies to all such orders. See *Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Notice of Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy and South Africa*, 64 FR 25288 (May 11, 1999); *Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 64 FR 27756 (May 21, 1999); *Notice of Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 68 FR 11520 (March 11, 2003); and *Notice of Amended Countervailing Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Italy, and South Africa*, 68 FR 11524 (March 11, 2003) (collectively, *AD and CVD Orders*). The antidumping orders on SSPC from Italy and South Korea and the countervailing duty order on Belgium were revoked effective August 31, 2011, November 16, 2011, and July 18, 2010, respectively. See *Stainless Steel Plate in Coils From Italy: Revocation of Antidumping Duty Order*, 76 FR 54207 (August 31, 2011); *Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act and Revocation of the Antidumping Duty Order on Stainless Steel Plate in Coils From the Republic of Korea; and Partial Revocation of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils From the Republic of Korea*, 76 FR 74771 (December 1, 2011); *Stainless Steel Plate in Coils from Belgium: Final Results of Full Sunset Review and Revocation of the Countervailing Duty Order*, 76 FR 25666 (May 5, 2011).

redetermination issued in accordance with the CAFC's decision in *ArcelorMittal*.<sup>2</sup> Those results of redetermination found that SSPC with an actual thickness of less than 4.75 mm, regardless of its nominal thickness, is not subject to the *AD and CVD Orders* on SSPC.<sup>3</sup> Consistent with the CAFC's decision in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), as clarified by *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*), the Department is notifying the public that the final CAFC judgment in this case is not in harmony with the Department's final determination and is amending its Final Scope Ruling concerning SSPC with a nominal thickness of 4.75 mm, but an actual thickness of less than 4.75 mm.<sup>4</sup>

EFFECTIVE DATE: September 17, 2012

FOR FURTHER INFORMATION CONTACT: James Terpstra, AD/CVD Operations, Office 8, Import Administration – International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482-3965.

SUPPLEMENTARY INFORMATION:

Having received a scope inquiry request from ArcelorMittal Stainless Belgium N.V. (AMS Belgium),<sup>5</sup> the Department, on December 3, 2008, issued its Final Scope Ruling in which it relied upon 19 CFR 351.225(k)(2) to determine that SSPC with a nominal thickness of 4.75mm, but with an actual thickness less than 4.75mm, is included within the scope of the *AD and CVD Orders*.<sup>6</sup>

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<sup>2</sup> See *ArcelorMittal Stainless Belgium N.V. v. United States*, Court No. 08-00434 (Ct. Int'l Trade Mar. 26, 2013) (memorandum and order) (*Final CIT Order*).

<sup>3</sup> See Results of Redetermination Pursuant to Remand, dated February 15, 2013 (Second Remand Redetermination).

<sup>4</sup> See Stainless Steel Plate in Coils from Belgium: Final Scope Ruling, dated December 3, 2008 (Final Scope Ruling).

<sup>5</sup> Formerly known as Ugine & ALZ Belgium N.V. (U&A) and currently known as Aperam Stainless Belgium A.V.

<sup>6</sup> See Final Scope Ruling at 13-14.

Following a request for a voluntary remand, the CIT remanded the Final Scope Ruling to the Department to reconsider whether SSPC with a nominal thickness of 4.75 mm, but an actual thickness of less than 4.75 mm, is subject to the *AD and CVD Orders*.<sup>7</sup> In remanding the case, the Court directed the Department to apply 19 CFR 351.225, in conjunction with the decisions of the CAFC in *Duferco Inc. v. United States*, 296 F.3d 1087 (Fed. Cir. 2002), and *Tak Fat Trading Co. v. United States*, 396 F. 3d 1378 (Fed. Cir. 2005).<sup>8</sup>

On remand, the Department re-examined the language of the scope and, based in part upon interpreting the language in the context of the SSPC industry, determined it to be ambiguous as to whether it covers SSPC with a nominal thickness of 4.75 mm, but an actual thickness of less than 4.75 mm.<sup>9</sup> Having found the scope language ambiguous, the Department then analyzed the criteria specified by 19 CFR 351.225(k)(1), *i.e.*, “descriptions of the merchandise contained in the petition, the initial investigation, and the determinations of the Secretary (including prior scope determinations) and the {International Trade Commission},” and found those to be non-dispositive as well.<sup>10</sup> The Department thus reincorporated its earlier analysis under 19 CFR 351.225(k)(2) to conclude that SSPC with a nominal thickness greater than or equal to 4.75 mm regardless of the actual thickness is included within the scope of the *AD and CVD Orders*.<sup>11</sup>

On July 12, 2011, the CIT sustained the Department’s First Remand Redetermination.<sup>12</sup> AMS Belgium appealed the CIT’s final judgment to the CAFC.

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<sup>7</sup> See *ArcelorMittal Stainless Belgium N.V. v. United States*, Court No. 08-00434 (Ct. Int’l Trade Mar. 30, 2010) (remand order).

<sup>8</sup> See *id.* at 1-2.

<sup>9</sup> See Final Results of Redetermination Pursuant to Remand, dated July 29, 2010 (First Remand Redetermination), at 5-8, 16-17.

<sup>10</sup> See *id.* at 8-12, 22-24.

<sup>11</sup> See *id.* at 25.

<sup>12</sup> See *ArcelorMittal Stainless Belg. N.V. v. United States*, Court No. 08-00434, Slip Op. 11-82 (Ct. Int’l Trade July 12, 2011).

On September 7, 2012, the CAFC reversed the CIT's judgment. The CAFC concluded that substantial evidence did not support the Department's determination that the language of the SSPC orders is ambiguous and held that "the plain meaning of the orders regarding the 4.75 mm thickness is a reference to actual thickness of products subject to the orders."<sup>13</sup>

On January 4, 2013, the CIT issued a remand order directing the Department to take action in accordance with the CAFC's decision in *ArcelorMittal* and to find that SSPC with an actual thickness of less than 4.75 mm is outside the scope of the *AD and CVD Orders*.<sup>14</sup>

Pursuant to that order, the Department construed the scope of the *AD and CVD Orders* so that SSPC from Belgium with an actual thickness of less than 4.75 mm is not subject to the *AD and CVD Orders* on SSPC, regardless of its nominal thickness.<sup>15</sup> The CIT sustained the Department's remand redetermination on March 26, 2013.<sup>16</sup>

#### Timken Notice

In its decision in *Timken*, 893 F.2d at 341, as clarified by *Diamond Sawblades*, the CAFC has held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (the Act), the Department must publish a notice of a court decision that is not "in harmony" with a Department determination and must suspend liquidation of entries pending a "conclusive" court decision. The CAFC's September 7, 2012, judgment in *ArcelorMittal* constitutes a final decision of that court that is not in harmony with the Department's Final Scope Ruling. This notice is published in fulfillment of the publication requirements of *Timken*.

#### Amended Final Scope Ruling

Because there is now a final court decision with respect to SSPC with an actual thickness

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<sup>13</sup> See *ArcelorMittal*, 694 F.3d at 88-90.

<sup>14</sup> See *ArcelorMittal Stainless Belgium N.V. v. United States*, Court No. 08-00434 (Ct. Int'l Trade Jan. 4, 2013) (remand order).

<sup>15</sup> See Second Remand Determination at 6-7, 10.

<sup>16</sup> See *Final CIT Order*.

of less than 4.75 mm, the Department amends its Final Scope Ruling and now finds that the scope of the *AD and CVD Orders* excludes SSPC with an actual thickness of less than 4.75 mm, regardless of its nominal thickness. Accordingly, the Department will issue revised instructions to U.S. Customs and Border Protection.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

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Paul Piquado  
Assistant Secretary  
for Import Administration

May 14, 2013  
(Date)

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